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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~318.~~ 59

THE CITY OF NAUVOO, PLAINTIFF IN ERROR,

vs.

GEORGE A. BITTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 27, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 318.

THE CITY OF NAUVOO, PLAINTIFF IN ERROR,

vs.

GEORGE A. RITTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you or some of you, between George A. Ritter, plaintiff, and city of Nauvoo, defendant, a manifest error hath happened to the great damage of said city of Nauvoo, as by its complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court, to be then and there held, that the record and proceedings afore-
2 said being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

[SEAL.] J. A. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

(Indorsed:) United States Supreme Court. City of Nauvoo, pl'ff in error, vs. George A. Ritter, def't in error. Writ of error. Filed August 28, 1875. J. A. Jones, clerk.

3 UNITED STATES OF AMERICA, *ss:*

To George A. Ritter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein city of Nauvoo is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

S. H. TREAT,
District Judge.

We hereby acknowledge service of the above citation this 30th day September, A. D. 1875.

JNO. M. & JNO. MAYO PALMER.
Att'ys for Defendant in Error.

(Indorsed:) Supreme Court United States. George A. Ritter v. City of Nauvoo. Citation.

4 Pleas in the circuit court of the United States of America for the southern district of Illinois, at a term begun and held at Springfield, in said district, on the first Monday of June, in the year of our Lord one thousand eight hundred and seventy five, and of our Independence the ninety-ninth year.

Present, the Hon. Samuel H. Treat, district judge of said district, and pro tempore sole judge of said circuit court in the absence of the Hon. Thomas Drummond, judge the seventh judicial district.

J. A. JONES, *Clerk.*

GEORGE A. RITTER } Debt.
vs.
CITY OF NAUVOO. }

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

George A. Ritter, who is a citizen of the State of Missouri, plaintiff, puts in his place Mess'rs Jno. M. & Jno. Mayo Palmer, his attorneys, against the city of Nauvoo, a municipal corporation existing under the laws of the State of Illinois, a citizen of said State, and resident within the district aforesaid, defendant in a plea of debt.

5 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-five, the said plaintiff, by his said attorneys, filed in the office of the clerk of the circuit court of said district his bond for costs; which said bond are in the words and figures following, to wit:

Bond for costs.

Circuit court, January term, A. D. 1875.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

GEORGE A. RITTER } In debt.
vs.
CITY OF NAUVOO. }

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this tenth day of May, 1875.

GEORGE RITTER.

(Endorsed:) Filed May 10th, A. D. 1875. J. A. Jones, clerk.

6 Afterwards, to wit, on the 28th day of May, of the year aforesaid, came again the plaintiff, by his attorneys, and filed in the said clerk's office his declaration, in the words & figures following, to wit:

Declaration.

In the circuit court of the United States, southern district of Illinois. June term, A. D. 1872.

George A. Ritter, who is a citizen of the State of Missouri, the plaintiff in this suit, complains of the city of Nauvoo, a municipal corporation existing under the laws of the State of Illinois, a citizen of said State, and resident within the district aforesaid, of a plea that it render to the plaintiff the sum of ten thousand dollars, which it owes and unjustly detains from him. For that whereas the said defendant heretofore, to wit, on the twelfth day of January, A. D. 1854, at &c. aforesaid, made its certain writing obligatory, commonly called a municipal railroad bond, sealed with the seal of the said defendant, the date whereof is the day and year aforesaid, by which said bond the said defendant promised to pay to the order of the Warsaw and Rockford Railroad Company, in the gold or silver coin of the United States of America, at the State Bank of the State of Missouri, in the city of S't Louis, twenty years after the date thereof, the sum of six hundred and twenty-five dollars, with interest, at the rate of eight per centum per annum, from the date of the negotiation of said bond, payable semi-annually on the first days
7 of January and July in each year, according to certain interest coupons thereto attached, and then and there negotiated the said bond and delivered the same to the said Warsaw and Rockford Railroad Company, and the said Warsaw & Rockford Railroad Company, to whose order the sum of money in the said bond specified was made payable on the day and year aforesaid at, &c., aforesaid, endorsed and negotiated the same to the plaintiff. By means whereof, and by force of the statute in such case made and provided, the defendant became liable to pay to the plaintiff the sum of money, in the gold or silver coin of the United States of America, in the said bond specified according to the tenor and effect of the said bond. And although the said sum of money hath been long due and payable, the defendant hath not paid the same, or any part thereof, but hath refused so to do, whereby an action hath accrued to the said plaintiff to demand and have of and from the defendant the said sum of six hundred and twenty-five dollars, parcel of the said sum above demanded.

And whereas, also, the said defendant heretofore, to wit, on the 29th day of March, 1854, at, to wit, the district aforesaid, made its certain writing-obligatory, commonly called a municipal railroad bond, sealed with the seal of the defendant, the date whereof is the day and
8 year aforesaid, in and by which said bond the said defendant promised to pay, in the gold or silver coin of the United States of America, to the order of the Warsaw and Rockford Railroad Company, at the State Bank of the State of Missouri, in the city of S't Louis, twenty years after the date thereof, the sum of six hundred and twenty-five dollars, with interest, at the rate of eight per centum per annum, from the date of the negotiation of said bond, payable semi-annually on the first days of January and July in each year, according to certain interest coupons to the said bond attached, and then and there negotiated the said bond and delivered the same to the Warsaw and Rockford Railroad Company, and the said Warsaw and Rockford Railroad Company, on the day and year aforesaid, at, &c., aforesaid, there and then negotiated the said bond, and endorsed the same to the plaintiff, who became, and was then and there, and still is, the lawful holder thereof. By means whereof, and by force of the statute in such case made and

provided, the defendant became liable to pay the plaintiff the said sum of money in the said bond specified, according to its tenor and effect;

and although the said sum of money in the said bond specified
9 hath long been due and payable, the said defendant hath not paid the same, or any part thereof, to the plaintiff, but wholly neglects and refuses so to do. Whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of six hundred & twenty-five dollars, in the gold or silver coin of the United States of America, in the said bond specified, other parcel of the said sum above demanded.

And whereas, also, the said defendant on the 29th day of March, A. D. 1854, at, to wit, the district aforesaid, made its certain other writing obligatory, commonly called a municipal railroad bond, sealed with the seal of the said defendant, the date whereof is the day and year aforesaid, and thereby then and there, in and by said bond, promised to pay to the order of the Warsaw and Rockford Railroad Company, twenty years after the date thereof, at the State Bank of the State of Missouri, he sum of six hundred and twenty-five dollars, in the gold or silver coin of the United States of America, with interest thereon at the rate of eight per centum per annum, from the date of the negotiation of the said bond, payable semi-annually on the first days of January and July in each year, according to certain interest-coupons
10 to the said bond attached; and the said defendant then and there on the day and year aforesaid, at, &c., aforesaid, negotiated the said bond and delivered the same to the said Warsaw and Rockford Railroad Company, and afterwards, to wit, on the day and year aforesaid, at &c., aforesaid, the said Warsaw and Rockford Railroad Company endorsed the same to the plaintiff, who became, and was then and there, and still is, lawful holder and bearer thereof. By means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the sum of money (in the gold or silver coin of the United States of America) in the said bond specified according to its tenor and effect. Yet the said plaintiff in fact saith that though the said sum of money in the said bond speicfied hath long been due and payable, the said defendant hath not paid the same or any part thereof, but wholly neglects and refuses so to do; whereby an action hath accrued to the said plaintiff to demand and have of and from the defendant the said sum of six hundred and twenty-five dollars, in the gold or silver coin of the United States of America, in the said bond mentioned, and other parcel of the said sum above demanded.

11 And whereas, also, the said defendant on the 29th day of March, 1854, at, to wit, the district aforesaid, made its certain other writing-obligatory, commonly called a municipal railroad bond, sealed with its seal, the date whereof is the day and year aforesaid, and thereby then and there in and by the said bond promised to pay to the order of the Warsaw and Rockford Railroad Company, twenty years after the date thereof, at the State Bank of the State of Missouri, the sum of six hundred and twenty-five dollars in the gold or silver coin of the United States of America, with interest thereon at the rate of eight per centum per annum from the date of the negotiation of the said bond, payable semi-annually on the first days of January and July in each year, according to certain interest-coupons to the said bond attached; and the said defendant then and there on the day and year aforesaid, at, &c., aforesaid, negotiated the said bond and delivered the same to the said Warsaw and Rockford Railroad Company, and afterwards, to

wit, on the day and year aforesaid, at, &c., aforesaid, the said Warsaw and Rockford Railroad Company endorsed the same to the plaintiff, who became, and was then and there, and still is the owner
12 and lawful holder and bearer thereof. By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the plaintiff the said sum of money (in the gold or silver coin as aforesaid) in the said bond specified according to its tenor and effect; and although the said sum of money in the said bond mentioned hath long been due and payable, the said plaintiff hath not paid the same or any part thereof, but neglects and refuses so to do; whereby and action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of six hundred and twenty-five dollars (in the gold or silver coin of the United States) in the said bond specified, other parcel of the same above demanded.

And whereas, also, the said plaintiff afterwards, to wit, on the first day of January, A. D. 1875, at, to wit, the district aforesaid, at the special instance and request of the defendant, lent to the defendant, and the defendant then and there borrowed from the plaintiff a large sum of money, to wit, the sum of ten thousand dollars, to be paid by the said defendant to the plaintiff, when the defendant should be thereto requested. Whereby and by reason of the said last mentioned
13 sum of money being and remaining unpaid, an action hath accrued to the plaintiff to demand and have of and from the defendant the said last mentioned sum of ten thousand dollars, other parcel of the sum above demanded.

And whereas, also, the said defendant afterward, to wit, on the day and year aforesaid, at, &c., aforesaid, had and received a certain other sum of money, to wit, the sum of ten thousand dollars to and for the use of said plaintiff, to be paid by the defendant to the plaintiff when the said defendant should be thereunto afterwards requested; whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the plaintiff to demand and have of and from the defendant the said sum of ten thousand dollars, other parcel of the sum above demanded.

And whereas, also, the said defendant heretofore, to wit, on the day and year aforesaid, at, &c., aforesaid, was indebted to the plaintiff in the sum of ten thousand dollars for interest upon and for the forbearance of divers large sums money before then lent and advanced by the plaintiff to the defendant, and forborne to the said defendant for divers large spaces of time before then elapsed, to be paid to the
14 plaintiff when the said defendant should be thereunto afterwards requested, whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the plaintiff to demand and have of and from the defendant the said last mentioned sum of ten thousand dollars, other parcel of the sum aboved demanded. Yet the said defendant, although often requested, hath not paid the said sum of ten thousand dollars above demanded, or any part thereof, but to do the same wholly neglects and refuses, to the damage to the plaintiff of ten thousand dollars, and therefore he brings suit, &c.

JNO. M. & JNO. MAYO PALMER,
Att'ys for Pl'ff.

The City of Nauvoo to George A. Ritter, Dr.

To money loaned	$10,000
To money had and received	10,000
To interest	10,000

Endorsed:) Filed May 28th, 1875. J. A. Jones, clerk.

15 And now afterwards, to wit, on the said 28th day of May, in the year of our Lord one thousand eight hundred and seventy-five, the plaintiff, by his attorneys, John M. & Jno. Mayo Palmer, files his copy of bonds & coupons declared on in the words and figures following, to wit:

Copy of bonds & coupons declared on.

Copy of bonds and coupons sued on.

The bonds are alike, differing only in number and date. The numbers are 2, 3, 4, and 6. No. 2 is date' January 12, 1854; the others are dated March 29th, 1854. The coupons are alike, differing only in date of maturity. The bonds have coupons to each attached, representing semi-annual interest maturing from July 1st, 1859, to maturity of the bond, both inclusive.

STATE OF ILLINOIS.

Hancock County, city of Nauvoo.

Warsaw and Rockford Railroad Bond.

No. 3.] [$625.

Know all men by these presents, that the city of Nauvoo is hereby held and bound unto the Warsaw & Rockford Railroad Company in the sum of six hundred and twenty-five dollars, which the said city of Nauvoo promises to pay in gold or silver, at the State Bank of the
16 State of Missouri, in the city of S't Louis, to the order of said Warsaw and Rockford Railroad Company, twenty years after the date thereof, with interest at the rate of eight per cent. per annum from the date of the negotiation of this bond in the hands of the holder (such date to be endorsed thereon), payable semi-annually at the State Bank of Missouri, at S't Louis, viz, on the first days of January and July in each year, on the presentation and delivery of the interest-coupons hereto severally subjoined. This bond is issued under authority of an ordinance entitled "An ordinance authorising subscription to the Warsaw and Rockford Railroad Company, and for other purposes," passed December 17th, 1853, by the city council of the city of Nauvoo, a copy of which is hereto attached. This bond is redeemable at the expiration of twenty years from the date hereof.

In testimony whereof, and pursuant to the authority granted by said ordinance, the mayor of said city of Nauvoo has signed, and the clerk of said city has countersigned these presents, and caused the seal of the said city to be affixed hereto, at Nauvoo, in the county of Hancock and State of Illinois, this twenty-ninth day of March, A. D. 1854.

S. M. CHAPMAN, *Mayor.*

17 W. M. COSGROVE, *Clerk.*

(On the margin:)

Pay to bearer.

THO'S O. SULLIVAN,

President of the Warsaw and Rockford Railroad Company.

On the back of the bond is the following:

CITY ORDINANCE NO. 41.

An ordinance authorizing subscription to the Warsaw and Rockford Railroad Company and for other purposes.

Whereas an act supplemental to an act entitled an act to provide for a general system of railroad incorporation, approved November 6th, 1849, containing the following provisions, to wit:

SEC. 1ST. That whenever the citizens of any city or county in this State are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated, or hereafter to be organized or incorporated, under any law of this State, such city or county may, and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company in any sum not exceeding one hundred thousand dollars for each of said cities or counties; and the stock so subscribed or purchased shall be under the control of the county court of the county or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

SEC. 2D. That for the payment of said stock the judges of the county court of the county or the common council of the city making such
18 subscription or purchase are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest and the ultimate redemption of the principal, or if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase in bonds of the city or county making such subscription, to be drawn for that purchase in sums not less than fifty dollars, bearing interest not exceeding ten per centum per annum, provided that no bond shall be paid out at a rate less than par value.

SEC. 3D. The railroad companies already organized or incorporated, or hereafter to be organized or incorporated, under the laws of this State, are hereby authorized to receive the bonds of any county or city becoming subscriber to the capital stock of such company at par, and in lieu of cash, and to issue their bonds bearing interest not exceeding ten per centum per annum for any monies by them borrowed for the construction for their railroad, and fixtures, or for the purchase of engines and cars, and for such purpose may dispose of any bonds by them received as aforesaid.

SECTION 4TH. No subscription shall be made, or purchase, or bond issued by any county or city, under the provisions of this act,
19 whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act for county officers), shall vote for the same, and the judges of the county court of any county or the common council of any city desiring to take a stock as aforesaid, shall give at least thirty days' notice in the same manner as notices are given for elections for State or county officers in said counties requiring said electors of said counties or said cities to vote upon the day named in such notices at their usual places of voting for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the company in which stock is proposed to be

subscribed, the amount which it is to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which such loan is to be effected, and the opinion of the electors shall be expressed upon their ballots "for subscription," or "against subscription," and counted and returned by the judges and clerks of elections as in other cases, and if a majority of the voters of said county or city assuming the standard aforesaid shall be in favor of the same, such authorized subscription or purchase, or any part thereof, shall then be made by such judges or common council. In case any election had under this act is held upon a day of general election for county officers shall be the standard of number of qualified voters as aforesaid. No bonds shall be issued under the provisions of this act by any county or city excepting for the amounts required to be paid at the time of subscription, and for the amounts of, and at the time when assessments upon all stockholders of said company shall be regularly assessed and made payable.

And whereas, by virtue of the powers granted to counties and cities by the above recited provisions of said supplemental act the common council of the city of Nauvoo did, on the 4th of June, A. D. 1853, make an order submitting it to the legal voters of said city, at an election to be held at the usual place of holding elections in said city, on the thirtieth day of July, A. D. 1853, to ascertain the wishes of the people of said city in reference to the subscription by the common council of said city to the capital stock of the Warsaw and Rockford Railroad Company to the amount of twenty-five thousand dollars, to be paid in bonds of said city, having twenty years to run, and bearing an annual interest of eight per cent., payable semi-annually.

And whereas said election was held agreeably to said order, thirty days' previous notice having been given as required by said act aforesaid, and the returns of said elections in due form made to the city council, who canvassed at the regular meeting held on the 1st day of August, A. D. 1853, when it appeared there had been cast for subscription a large majority of the votes of said city, the number of votes given for subscription being a large majority of all the votes polled at the last general election in said city, and a much larger vote than that required by the act aforesaid to authorize said subscription:

Now, therefore, be it ordained by the city council of the city of Nauvoo, as follows:

SECT. 1st. That the mayor is hereby empowered, authorized, and directed to subscribe in the sum of twenty-five thousand dollars to the capital stock of the Warsaw and Rockford Railroad Company, on behalf & in the name of said city, by which said act of its chief executive officer the faith of said city shall be irrevocably pledged to said company in the sum of twenty-five thousand dollars.

SEC. 2nd. That whenever a regular assessment shall be levied and made payable upon the stockholders of said Warsaw and Rockford Railroad Company, and also for the payment of the first five per cent. to be paid upon subscription, the mayor and the city clerk for the time being shall execute the bonds of said city for the sum of not less than fifty nor more than one thousand dollars each, for the amount so assessed upon the stock so subscribed by said city, signed by the mayor and countersigned by the city clerk, with the corporate seal of said city affixed, which said bonds shall be dated when issued, and shall be made due and payable in twenty years from the date thereof; the

said bonds shall be made payable to the order of the Warsaw and Rockford Railroad Company, at the State Bank of the State of Missouri, in the city of S't Louis, and shall bear interest at the rate of eight per cent. per annum, payable semi-annually; said bonds shall be in the usual form, and shall be entitled the Warsaw and Rockford Railroad bonds, upon the backs of which, ordinance authorizing their issue shall be printed.

SEC. 3d. That the said bonds, when executed as provided in the preceeding section, shall be delivered to the directors of the Warsaw and Rockford Railroad Company in payment of the subscription by the said city to the capital stock of said company as the city council may
23 from time to time direct.

SEC. 4th. That the railroad stock of which said city shall become seized and possessed by the subscription hereinbefore provided for, and all dividends arising therefrom, are hereby pledged and set apart to the payment of the principal and interest of the said bonds of said city, issued for and in payment of said subscription, and whenever any of said railroad stock shall be sold by said city, the proceeds of every such sale shall be applied forthwith to the redemption of said bonds so far as the same may extend thereunto, and for no other purpose whatsoever.

SEC. 5th. That any owner or holder of any or all of said city bonds may at any time deposit the same with said city and receive in exchange therefor an equal amount of railroad stock, provide' the application for such exchange shall be made before the said city shall have sold or otherwise disposed of said railroad stock so applied for.

SEC. 6th. Be it further ordained, That in all elections of directors of said Warsaw and Rockford Railroad, or other elections in which the stockholders of said company, by the rules and regulations thereof,
24 are authorized or entitled to vote, *or* votes as said city of Nauvoo may be entitled to cast by virtue of her said subscription of twenty-five thousand dollars, shall be thrown on behalf of said city by the mayor for the time being, or such other person or persons as the city council of said city may designate for such purpose, or by such proxy or proxies as may by him or them so designated by said council be appointed in accordance with the by-laws of said company, said stock of said city to be represented by her delegated authority in the same manner and to the same extent, subject also to the same restrictions, as stock owned and represented by individuals in said company.

Passed Dec. 17th, 1853.

Attest:

S. M. CHAPMAN, *Mayor.*

W. M. COSGROVE, *Clerk.*

ORDINANCE No. 42.

An ordinance amendatory to an ordinance authorizing subscription to the Warsaw & Rockford Railroad Company, &c.

Be it ordained by the city council of the city of Nauvoo, That the second section of the ordinance above referred to be so amended as to have interest-coupons bearing even date with said bonds signed by the mayor attached to said bonds for the semi-annual interest payments.

Passed January 2nd, 1854.

25 Attest:

S. M. CHAPMAN, *Mayor.*

W. M. COSGROVE, *Clerk.*

The following is a specimen copy of the coupons attached to each of the bonds, the coupons being precisely alike except date of maturity:

EIGHT PER CENT. STOCK.

City of Nauvoo, Hancock Co., State of Ill.

Warsaw and Rockford Railroad bond.

No. 3, March 29, 1854.

Pay the bearer twenty-five dollars on the 1st day of January, 1873, interest to that date.

S. M. CHAPMAN, *Mayor.*

(Endorsed:) Filed May 28th, A. D. 1875. J. A. Jones, clerk.

26 Now, afterwards, to wit, at the circuit court begun and held at Springfield, in State of Illinois, for the southern district thereof, on the 1st Monday of June, in the year of our Lord one thousand eight hundred and seventy-five—present the Hon. Samuel H. Treat, district judge—and on the 1st day of said term, being the seventh day of said June, the following proceedings were had in said entitled cause, to wit:

Rule to plead.

GEORGE A. RITTER
v.
CITY OF NAUVOO. } Debt.

On motion of plaintiff, by Mess'rs Jno. M. & Jno. Mayo Palmer, his attorneys, the defendant, having been regularly served with process, is ruled to plead herein by Wednesday, the 23rd day of June inst.

Now, afterwards, to wit, on the 23rd day of June, in said year of our Lord one thousand eight hundred and seventy-five, the said defendant, by Mess'rs Stuart, Edwards and Brown, and G. Edmonds, esq., files its pleas 1, 2, 3, 4, 5, 6, in the words & figures as follows, to wit:

27 *Pleas, 1 to 6.*

United States circuit court for southern district of Illinois, June term, 1875.

GEORGE A. RITTER
vs.
CITY OF NAUVOO. } Assumpsit.

1. And now comes the defendant, by Stuart, Edwards & Brown, and G. Edmonds, j'r, its attorneys, & defends, &c., when, &c., and says that it is not indebted in manner & form as the plaintiff hath above thereof complained against it, & of this it puts itself upon the count'y, &c., & the plaintiff doth the like.

G. EDMONDS, J'R, *Att'y for Def't.*
JOHN M. & JOHN MAYO PALMER,
For Plaintiff.

2. For further plea, as to said declaration and each count thereof, defendant says action on, because it says that the plaintiff's sole causes of action in this suit, and the four bonds and interest coupons thereto subjoined mentioned in said several counts of said declaration & not otherwise, & that said bonds & coupons were issued without any authority of law; and this it is readyto verify. Wherefore it prays judgment, &c.

28 3. For further plea as to said declaration & each count thereof, defendant says actio non, because it says that the plaintiff's sole cause of action in this cause on the bonds & interest coupons thereto subjoined, mentioned in the several counts of said declaration, that the defendant on June 1st, 1853, was, & from thence hitherto has been, a municipal corporation, a city, under name and style of "City of Nauvoo," having a common council; that the common council of said city did not at any time prior to the issue of said bonds & coupons, order an election to be held & submitted to the legal voters of said city, the question of subscribing to the capital stock of the Warsaw and Rockford Railroad Company, as provided by section 4 of an act of the general assembly of Illinois, entitled "An act to provide for a general system of railroad incorporation," approved November 6, 1849, or by any other law of the State of Illinois. And this it is ready to verify; wherefore it prays judgment, &c.

4. For further plea as to said declaration & each count thereof, defendant says actio non because it says that the plaintiff's sole cause of action in this cause are the bonds & interest coupons thereto subjoined in said several counts of said declaration mentioned & not otherwise, that defendant on June 1st, 1853, was, & from thence hither has

29 been, a municipal corporation, a city, under name & style of "City of Nauvoo," having a common council; that the common council of said city did not on June 4, 1853, or at any other time prior to the issue of said bonds, make an order submitting to the legal voters of said city, at an election to be held at the usual place of holding elections in said city on July 13th, 1853, or on any other day prior to the issue of said bonds, the question of subscription to the capital stock of the Warsaw & Rockford Railroad Company, to the amount of twenty-five thousand dollars, or any sum whatever, to be paid in bonds of said city, as stated in the ordinance of said city referred to in said bonds respectively & a copy of which ordinance is indorsed on the back of each and every of said bonds. And this it is ready to verify. Whereupon prays judgment, &c.

5. For further plea, as to said declaration & each count thereof, defendant says actio non, because it says that the plaintiff's sole causes of action in this cause on the bonds and interest coupons thereto subjoined in said several counts of said declaration mentioned & not otherwise; that defendant, on June 1, 1853, was, & from thence hitherto has been, a municipal corporation, a city, under name & style of "City of Nauvoo," having a common council; that the common council of said city of Nauvoo did not prior to the issue of said bonds & coupons

30 give thirty days' notice in the same manner as notices are given for election of State and county officers in said city, requiring said elections of said city to vote upon a day named in said notice, at their usual place of voting, for or against subscription for $25,000 or any other sum to the capital stock of the Warsaw & Rockford Railroad Company, to be paid in bonds of said city, stating the time which said bonds proposed to be issued should run, and the interest which said bonds were to bear, as by the ordinance in said several bonds men-

tioned, & a copy of which is indorsed on the back of said bonds respectively, is stated to have been done. And it is ready to verify. Whereupon it prays judgment.

6. And for a further plea as to said declaration & each count thereof, defendant says actio non, because it says that the plaintiff's sole cause of action in this cause is on the bonds & interest coupons thereto subjoined in said several counts of said declaration mentioned & not otherwise; that defendant on the first day of June, 1853, was, & from thence hitherto & has been a municipal corporation, a city under the name and style of "City of Nauvoo," having a common council; that no election was held under any order of the common council of said city, entered on
June 4th, 1853, or at any other time prior to the issue of said
31 bonds, submitting to the legal voters of said city, at an election to be held at the usual place of holding elections in said city, for election of State and county officers, on July 13th, 1853, or on any other day prior to the issue of said bonds, the question of subscription to the capital stock of the Warsaw & Rockford Railroad Company to the amount of twenty-five thousand dollars, or any sum whatever, at which a majority of the qualified voters of said city (taking as a standard the number of votes thrown at the last general election previous thereto) voted for such subscription, as stated in the ordinance of said city, referred to in said bonds respectively, and a copy of which is printed on the back of each of said bonds. And this it is ready to verify; wherefore it prays judgment, &c.

STUART, EDWARDS & BROWN, AND
G. EDMONDS, J'R,
Att'ys for Def't.

(Endorsed:) Filed, June 23d, 1875. J. A. Jones, clerk.

32 Now, afterwards, to wit, on the 6th day of July, in the year of our Lord one thousand eight hundred & seventy-five, the said plaintiff, by said attorneys, files his demurrer to the second, third, fourth, & fifth pleas, in the words & figures as follows, to wit:

Demurrer to 2, 3, 4, & 5th pleas.

In the circuit court of the United States, southern district of Illinois.
June term, A. D. 1875.

GEORGE A. RITTER
vs.
THE CITY OF NAUVOO. } In debt.

And the said plaintiff, as to the said pleas of the said defendant by its second, third, fourth, and fifthly above pleaded says, that the same and the matters therein containing in the manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same. And this he, the said plaintiff, is ready to verify.

Wherefore, by reason of the insufficiencies of the said pleas in this behalf the said plaintiff prays judgment, and his debt aforesaid, together with his damages by him sustaining on occasion of the detention thereof, to be adjudged to him, &c.

33 JOHN M. & JOHN MAYO PALMER,
Att'ys for Plaintiff.

(Endorsed:) Filed July 6th, A. D. 1875. J. A. Jones, clerk.

Now, afterwards, to wit, on the 19th day of July, in the year our Lord one thousand eight hundred and seventy-five, the following further proceedings were had in said entitled cause, to wit:

Order sustaining demurrer.

GEORGE A. RITTER
vs.
CITY OF NAUVOO. } Debt.

This day this cause came on to be heard upon plaintiff's demurrer to defendant's 2nd, 3rd, 4th, & 5th pleas herein, and the court having heard argument of counsel, and being sufficiently advised in the premises, sustains said demurrer.

Now, afterwards, to wit, on the 2nd day of August, in the year of our Lord one thousand eight hundred and seventy-five, the following further proceedings were had in said entitled cause, to wit:

Judgment.

GEORGE A. RITTER
vs.
CITY OF NAUVOO. } Debt.

34 This day comes as well the plaintiff by Mess'rs John M. & John Mayo Palmer, his attorneys, as defendant by Mess'rs Stuart, Edwards and Brown, and G. Edmunds, j'r, esq., his attorneys, and the issue joined by consent is tried by the court, a jury being waived; and the court having heard the evidence and argument of counsel finds the issue for the plaintiff in the sum of five thousand four hundred and seventy-five dollars his debt in the declaration mentioned, and assesses his damages to the sum of one thousand seven hundred and sixty-four dollars and fifty-six cents.

It is therefore ordered and adjudged by the court, that the plaintiff recover of the defendant his said debt of five thousand four hundred and seventy-five dollars and one thousand seven hundred and sixty-four dollars and fifty-six cents, his damages aforesaid assessed, together with the sum of seventy-three dollars and fifty-five cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

And afterwards, to wit, on the second day of said August, came again said defendant, and filed in the clerk's office of said court
35 its bill of exceptions herein, in the words and figures following, to wit:

Bill of exceptions.

GEORGE A. RITTER
vs.
THE CITY OF NAUVOO.

Be it remembered, that by stipulation this cause was tried by the court without a jury; that upon the trial the plaintiff, to maintain the issues, introduced the bonds of the following description, with the coupons attached:

Copy of bonds & coupons sued on.

The bonds are alike, differing only in number and date. The numbers are 2, 3, 4, and 6. No. 2 is date' January 12th, 1854. The others are dated March 29th, 1854. The coupons are alike, differing only in date of maturity. The bonds have coupons to each attached, representing semi-annual interest maturing from July 1, 1859, to maturity of the bond, both inclusive.

STATE OF ILLINOIS.

Hancock County, city of Nauvoo.

Warsaw and Rockford Railroad bond.

No. 3.] [$625.

36 Know all men by these presents, that the City of Nauvoo is hereby held and bound unto the Warsaw & Rockford Railroad Company in the sum of six hundred and twenty-five dollars, which the said City of Nauvoo promises to pay in gold or silver at the State Bank of the State of Missouri, in the city of S't Louis, to the order of said Warsaw and Rockford Railroad Company, twenty years after the date thereof, with interest at the rate of eight per cent. per annum from the date of the negotiation of this bond in the hands of the holder (such date to be endorsed thereon), payable semi-annually at the State Bank of Missouri, at S't Louis, viz: On the first days of January and July in each year, on the presentation and delivery of the interest-coupons hereto severally subjoined. This bond is issued under authority of an ordinance entitled "An ordinance authorizing subscription to the Warsaw and Rockford Railroad Company, and for other purposes," passed December 17th, 1853, by the city council of the city of Nauvoo, a copy of which is hereto attached. This bond is redeemable at the expiration of twenty years from the date hereof.

37 In testimony whereof, and pursuant to the authority granted by said ordinance, the mayor of said city of Nauvoo has signed, and the clerk of said city has countersigned, these presents and caused the seal of the said city to be affixed hereto at Nauvoo, in the county of Hancock and State of Illinois, this twenty-ninth day of March, A. D. 1854.

S. M. CHAPMAN, *Mayor.*

W. M. COSGROVE, *Clerk.*

(On the margin:)

Pay to bearer.

THO'S O. SULLIVAN,
President of the Warsaw and Rockford Railroad Company.

On the back of the said bond is the following:

CITY ORDINANCE NO. 41.

An ordinance authorizing subscription to the Warsaw and Rockford Railroad Company, and for other purposes.

Whereas an act supplemental to an act entitled "An act to provide for

a general system of railroad incorporation," approved November 6th, 1849, containing the following provisions, to wit:

SEC. 1st. That whenever the citizens of any city or county in this State are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated, or hereafter to be organized or incorporated under any law of this State, such city or county may, and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of said cities or
38 counties; and the stock so subscribed or purchased shall be under the control of the county court of the county or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

SEC. 2d. That, for the payment of said stock, the judges of the county court of the county or the common council of the city making such subscription or purchase are hereby authorized to borrow money, at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest and the ultimate redemption of the principal, or if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase in bonds of the city or county making such subscription to be drawn for that purchase in sums not less than fifty dollars, bearing interest not exceeding per centum per annum, provided that no bond shall be paid out at a rate less than par value.

SEC. 3d. The railroad companies already organized or incorporated, or hereafter to be organized or incorporated under the laws of this State, are hereby authorized to receive the bonds of any county or city becoming subscriber to the capital stock of such company at par and in
39 lieu of cash, and to issue their bonds, bearing interest not exceeding ten per centum per annum, for any monies by them borrowed for the construction, for their railroad and fixtures, or for the purchase of engines and cars, and, for such purpose, may dispose of any bonds by them received as aforesaid.

SECTION 4th. No subscription shall be made, or purchase or bond issued, by any county or city, under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription, under this act, for county officers) shall vote for the same, and the judges of the county court of any county, or the common council of any city, desiring to take a stock as aforesaid shall give at least thirty days' notice in the same manner as notices are given for elections for State or county officers in said counties requiring said electors of said counties or said cities to vote, upon the day named in such notices, at their usual places of voting, for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the
40 company in which stock is proposed to be subscribed, the amount which it is to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or, in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which such loan is to be effected, and the opinion of the electors shall be expressed upon their ballots "for subscription" or "against subscription," and counted and returned by the judges and clerks of elections, as in other cases, and if a majority

of the voters of said county or city (assuming the standard aforesaid) shall be in favor of the same, such authorized subscription or purchase, or any part thereof, shall then be made by such judges or common council. In case any election had under this act is held upon a day of general election for county officers shall be the standard of number of qualified voters, as aforesaid. No bonds shall be issued under the provisions of this act by any county or city, excepting for the amounts required to be paid at the time of subscription, and for the amounts of and at the time when assessments upon all stockholders of said company shall be regularly assessed and made payable.

41 And whereas, by virtue of the powers granted to counties and cities by the above-recited provision of said supplemental act, the common council of the city of Nauvoo did, on the 4th of June, A. D. 1853, make an order submitting it to the legal voters of said city, at an election to be held at the usual place of holding elections in said city, on the thirtieth day of July, A. D. 1853, to ascertain the wishes of the people of said city in reference to the subscription by the common council of said city to the capital stock of the Warsaw and Rockford Railroad Company to the amount of twenty-five thousand dollars, to be paid in bonds of said city having twenty years to run and bearing an an'ual interest of eight per cent., payable semi-annually.

And whereas said election was held agreeably to said order, thirty days' previous notice having been given as required by said act aforesaid, and the returns of said elections in due form made to the city council, who canvassed at the regular meeting held on the 1st day of August, A. D. 1853, when it appeared there had been cast for subscription a large majority of the votes of said city, the number of votes given for subscription being a large majority of all the votes polled at the last general election in said city, and a much larger vote than that required by the act aforesaid, to authorize said subscription:

42 Now, therefore, be it ordained by the city council of the city of Nauvoo, as follows:

SEC. 1st. That the mayor is hereby empowered, authorized, & directed to subscribe in the sum of twenty-five thousand dollars to the capital stock of the Warsaw & Rockford Railroad Company, on behalf and in the name of said city, by which said act of its chief executive officer the faith of said city shall be irrevocably pledged to said company in the sum of twenty-five thousand dollars.

SEC. 2nd. That whenever a regular assessment shall be levied and made payable upon the stockholders of said Warsaw and Rockford Railroad Company, and also for the payment of the first five per cent. to be paid upon subscription, the mayor and city clerk for the time being shall execute the bonds of said city for the sum of not less than fifty nor more than one thousand dollars each, for the amount so assessed upon the stock so subscribed by said city, signed by the mayor, and countersigned by the city clerk, with the corporate seal of said city affixed, which said bonds shall be dated when issued, and shall be made due and payable in twenty years from the date thereof; the said bonds shall be made payable to the order of the Warsaw and Rockford

43 Railroad Company, at the State Bank of the State of Missouri, in the city of S't Louis, and shall bear interest at the rate of eight per cent. per annum, payable semi-annual'; said bonds shall be in the usual form, and shall be entitled the Warsaw and Rockford Railroad bonds, upon the backs of which ordinance authorizing their issue shall be printed.

SEC. 3d. That the said bonds when executed as provided in the pre

ceding section, shall be delivered to the directors of the Warsaw and Rockford Railroad Company in payment of the subscription by the said city to the capital stock of said company, as the city council may from time to time direct.

SEC. 4th. That the railroad stock of which said city shall become seized and possessed by the subscription hereinbefore provided for, and all dividends arising therefrom, are hereby pledged and set apart to the payment of the principal and interest of the said bonds of said city, issued for and in payment of said subscription, and whenever any of said railroad stock shall be sold by said city the proceeds of every such sale shall be applied forthwith to the redemption of said bonds, so far as the same may extend thereunto, and for no other purpose whatsoever.

44 SEC. 5th. That any owner or holder of any or all of said city bonds may at any time deposit the same with said city, and receive in exchange therefor an equal amount of railroad stock, provide' the application for such exchange shall be made before the said city shall have sold or otherwise disposed of said railroad stock so applied for.

SEC. 6th. Be it further ordained that in all elections of directors of said Warsaw & Rockford Railroad, or other elections in which the stockholders of said company by the rules and regulations thereof, are authorized or entitled to vote or votes as said city of Nauvoo may be entitled to cast by virtue of her said subscription of twenty-five thousand dollars, shall be thrown on behalf of said city by the mayor for the time being, or such other person or persons as the city council of said city may designate for such purpose, or by such proxy or proxies as may by him or them so designated by said council be appointed in accordance with the by-laws of said company, said stock of said city to be represented by her delegated authority in the same manner & to the same extent, subject also to the same restriction, as stock owned & represented by individuals in said company. Passed Dec. 17th, 1853.

Attest:

S. M. CHAPMAN, *Mayor.*

W. M. COSGROVE, *Clerk.*

45 ORDINANCE No. 42.

An ordinance amendatory to an ordinance authorizing subscription to the Warsaw and Rockford Railroad Company, &c.

Be it ordained by the city council of the city of Nauvoo, that the second section of the ordinance above referred to be so amended so as to have interest coupons bearing even date with said bonds signed by the mayor attached to said bonds for the semi-annual interest payments. Passed January 2nd, 1854.

S. M. CHAPMAN, *Mayor.*

Attest:—W. M. COSGROVE, *Clerk.*

The following is a specimen copy of the coupons attached to each of the bonds. The coupons being precisely alike except date of maturity.

EIGHT PER CENT. STOCK.

City of Nauvoo, Hancock County, State of Ill.

Warsaw and Rockford Railroad bond.

No. 3, March 29th, 1854.

Pay the bearer twenty-five dollars on the 1st day of January, 1873, interest to that date.

S. M. CHAPMAN, *Mayor.*

This was all the evidence offered in the case. The court found
46 as matter of fact from this evidence that the bonds and coupons were regularly issued by the corporate authorities of the city of Nauvoo under the authority of the act indorsed, and that upon the recitals the city of Nauvoo as estopped to deny that the same were issued without an election held in pursuance of the said act of the general assembly of the State of Illinois, to which finding the defendant at the time excepted, and which exception the court overruled, and rendered judgment in favor of the plaintiff, to which the defendant excepted at the time.

S. H. TREAT. [SEAL.]

(Endorsed:) Filed August 2, 1875. J. A. Jones, clerk.

And afterwards, to wit, on the twenty-eighth day of said August, of the year aforesaid, came again said defendant, by its attorneys, and filed in said clerk's office its bond herein, in the words and figures following, to wit:

Bond.

Supreme Court of the United States. Error to southern district of Illinois.

CITY OF NAUVOO }
vs. }
GEORGE A. RITTER. }

47 Know all men by these presents, that we, the City of Nauvoo, as principal, and Henry Wiegand, John Bratz, and John Powell, of Nauvoo, Illinois, as securities, are held and firmly bound unto George A. Ritter, of Missouri, in the penal sum of five hundred dollars, to be paid to the said George A. Ritter, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly & severally, & our & each of our heirs, executors, and administrators firmly by these presents. Sealed with our respective seals. Dated this 10th day of August, A. D. 1875.

Whereas the above bounden'd City of Nauvoo hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States for the southern district of Illinois, at the June term thereof, 1875, wherein the said George a Ritter was plaintiff and said City of Nauvoo defendant:

Now, therefore, the condition of this obligation is such that if the above bounden'd City of Nauvoo shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

CITY OF NAUVOO, [L. S.]
By H. WIEGAND, *Mayor.*

GUSTAVE EBERDT, *Clerk.*

48 H. WIEGAND. [SEAL.]
JNO. G. BRATZ. [SEAL.]
JNO. POWELL. [SEAL.]

UNITED STATES OF AMERICA,
Southern Dist. of Illinois, ss:

On this 25th day of August, A. D. 1875, personally appeared before

me the above-named Henry Wiegand, John Bratz, & John Powell, Gustave Eberdt, by me known to be the persons described in and who executed the foregoing instrument as mayor, clerk, and securities, and severally acknowledged the execution thereof.

G. EDMUNDS, J'R,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Henry Wiegand, John Bratz, & John Powell, being duly sworn, & severally sworn each for himself, doth depose and say that he is a resident and freeholder within the southern district of Illinois, and that he is worth the sum of one thousand dollars over and above all his just debts, legal liabilities, and exemptions, and that the same is in property not exempt from execution.

Subscribed & sworn to before me this 25th day of August, 1875.

G. EDMUNDS, J'R,
U. S. Commissioner.

Approved.

S. H. TREAT,
Dist. Judge.

49 (Indorsed:) Filed August 28, 1875. J. A. Jones, clerk.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, J. A. Jones, clerk, of the circuit court of the United States in and for the southern district of Illinois, do hereby certify the foregoing to be a true and complete transcript of the papers filed and proceedings thereon had in a certain cause wherein George A. Ritter is plaintiff and City of Nauvoo defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this eighth day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

[SEAL.] J A. JONES, *Clk.*

(Indorsement on cover:) No. 318. The City of Nauvoo, plaintiff in error, vs. George A. Ritter. S. Illinois, C. C. U. S. Filed 27th November, 1875.

IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM, 1878.

CITY OF NAUVOO, Plaintiff in Error,

vs.

GEORGE A. RITTER, Defendant in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF ILLINOIS.

The plaintiff, George A. Ritter, sues the defendant, the City of Nauvoo, in the Circuit Court of the United States for the Southern District of Illinois, at the June Term, 1872, in debt, on four bonds alleged to have been issued in 1854, under the seal of said city, whereby said city promised to pay to the order of the Warsaw & Rockford Railroad Company in gold or silver coin of the United States of America, at the Bank of the State of Missouri, in the City of St. Louis, 20 years after date thereof, the sum of $625 with interest at the rate of 8 per cent per annum from the date of negotiation of said bonds, payable semi-annually on the first day of January and July of each year according to certain interest coupons thereto attached, and then and there negotiated said bonds and delivered the same to the said Warsaw & Rockford Railroad Company; that the said company endorsed and negotiated the same to plaintiff, by means whereof, by force of the statute in said case provided the defendant became liable to pay to the plaintiff the sum of money in gold and silver coin of the United States of America, in said bonds specified, according to the tenor and effect of said bonds, that defendant has

not paid the same, wherefore plaintiffs asks judgment. There was also a count for money loaned at the special instance and request of defendant; a count for money had and received for the use of said plaintiff, and also a count for forbearance of divers large sums of money lent to and advanced by the plaintiff to the defendant. The bonds through the real cause of action, are not set out in full, nor are the recitals of the bonds plead by plaintiff in the declaration. On the same day, the declaration was filed, plaintiff filed as exhibits, the four bonds sued on.

The City of Nauvoo, in answer to said declaration, filed five pleas. The first plea that the defendant is not indebted in the manner and form as alleged against it. The second plea that the plaintiff's sole cause of action in this suit was on the four bonds and interest coupons mentioned in the several counts of said declaration, and that said bonds and coupons were issued without any authority of law. The third plea—*actio non*, because the common council of said City of Nauvoo, did not at any time prior to the issue of said bonds and coupons order an election to be held and submitted to the legal voters of said city the question of subscribing to the capital stock of the Warsaw & Rockford Railroad Company, as provided by section 4 of an act of the General Assembly of the State of Illinois, entitled "An act to provide for a general system of railroad incorporation, approved November 6th, 1849, or by any other law in the State of Illinois. Fourth plea, *actio non*,—because the Common Council of the City of Nauvoo, did not on June 4, 1853, or at any other time prior to the issue of said bonds, make an order submitting to the legal voters of said city at an election to be held at the usual place of holding elections in said city, on July 13th, 1853, or on any other day prior to the issue of said bonds, the question of subscription to the capital stock of the Warsaw & Rockford Railroad Company of $25,000 or any sum whatever to be paid in bonds of said city as stated in the ordinance of said city referred to in said bonds respectively and a copy of which was endorsed on the back of each and every of said bonds. The fifth plea, *actio non*—because the Common Council of said City of Nauvoo did not, prior to the issue of said bonds and coupons give 30 days notice in the same manner as notices are given for the election of county officers of said city, requiring said electors of said city to vote upon the day named in said notice at the usual place of voting, for and against the subscription for $25,000 or any sum to the capital stock of the Warsaw & Rockford Railroad Company, to be paid in bonds of said city, stating the time which said bonds proposed to be issued should run, and the interest which said bonds were to bear, as in the ordinance on said several bonds mentioned, &c. The sixth plea, *actio non*—because no election was held under any order of the Common Council of said City, on

June 4th, 1853, or at any other time prior to the issuing of said bonds submitting to the legal voters of said city at an election to be held at the usual place of holding elections in said city for election of state and county officers on July 15, 1853, or any other day, prior to the issue of said bonds, the question of subscription to the capital stock of the Warsaw & Rockford Railroad Company, to the amount of $25,000, or any other sum whatever, at which a majority of the qualified voters of said city (taking as a standard the number of votes thrown at the last general election previous thereto) voted for said subscription as stated in the ordinance of said city referred to said bond &c.

The plaintiff filed a general demurrer to the second, third, fourth and fifth pleas, which demurrer was sustained. *There was no replication or demurrer filed to the sixth plea.* The case was submitted to the court without a jury, and judgment for the plaintiff.

The plaintiff offered in evidence the bonds, which are set out in full on page 14 of the transcript. The bond is in the usual form, and contains this recital: "This bond is issued under the authority of an ordinance entitled An ordinance authorizing a subscription to the Warsaw & Rockford R. R. Co., and for other purposes, passed December 17th, 1853, by the city council of the City of Nauvoo, a copy of which is hereto attached. This bond is redeemable at the expiration of twenty years from the date hereof." On the back of the bond the said ordinance is set out in full. The plaintiff also introduced the coupons, which are set out on page 17 of the transcript and rested his case.

The court below found as a matter of fact from this evidence "that the bonds and coupons were regularly issued by the corporate authorities of the City of Nauvoo, under the authority of the act endorsed, and that upon the recitals the City of Nauvoo is estopped to deny that the same were issued without an election held in pursuance of the said act of the General Assembly of the state of Illinois," to which finding the defendant excepted, and the exception was overruled and judgment rendered in favor of the plaintiff, as stated.

The questions arising in this case are—1st. Whether the demurrers to the second, third, fourth and fifth pleas were properly sustained; 2d. Whether or not, on the evidence introduced by the plaintiff, and the condition of the pleadings, the finding of the court below was correct and plaintiff entitled to judgment? The act of the General Assembly of the state of Illinois, recited in the preamble to the ordinance under which the bonds are alleged to have been issued, is entitled "An act to provide for a general system of railroad incorporation," approved November 6th, 1849. It contained the following provisions. The first section authorizes cities or counties to purchase or subscribe for shares of capital stock of railroad companies already organized or incorporated, in any sum not exceeding $100,000. The second section provides

that for payment of said stock the common council of the city making such subscription or purchase is authorized to borrow money, to pledge the faith of the city for the payment thereof, or if the common council should deem it most advisable they were authorized to pay for such subscription or purchase in bonds of the city or county making such subscription. The third section authorized railroad companies to receive such bonds and to dispose of them for certain purposes. Section four, which is the section particularly involved in this case, is as follows: "No subscription shall be made or purchase or bond issued by any county or city under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county or by the common council of any city to pay any such subscription, unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act for county officers) shall vote for the same, and the judges of the county court of any county, or the common council of any city, desiring to take stock as aforesaid shall give at least thirty days' notice in the same manner as notices are given for elections for state or county officers in said counties requiring said electors of said counties or said cities, to vote upon the day named in such notice, at their usual places of voting, for or against the subscription for said capital stock which they may propose to make, and said notice shall specify the company in which stock is proposed to be subscribed, the amount which it is to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notice shall state the terms upon which such loan is to be effected, and the opinions of the electors shall be expressed upon their ballots— For subscription,' or 'Against subscription,' and counted and returned by the judges and clerks of election as in other cases; and if a majority of voters of said county or city (assuming the standard aforesaid) shall be in favor of the same, such authorized subscription or purchase or any part thereof, shall then be made by such judges or common council. In case any election had under this act is held upon a day of general election for county officers shall be the standard of numbers of qualified voters as aforesaid. No bonds shall be issued under the provisions of this act by any county or city excepting for the amount required to be paid at the time of subscription, and for the amount and at the time when assessments upon all stockholders of said company shall be regularly assessed and made payable."

It will be seen that this section absolutely forbids any issuing of bonds by any city under the provisions of the act unless a majority of the qualified voters of the city (taking as a standard the number of votes

thrown at the last general election previous to the vote had upon the question of subscription under this act for the county officers) shall vote for the same. This was a condition precedent without which no bond could be issued. Not only that, but the election must be held in order to confer the authority to make the subscription. The common council of any city desiring to take such stock were required to give "at least thirty days' notice in the same manner as notices are given for elections for city and county officers in said county, requiring said electors of said city to vote upon the day named in such notice, at their usual places of voting, for or against the subscription for said capital stock.;' And the notice was to be a particular kind of notice—that is to say, it should specify "the company in which stock is proposed to be subscribed, the amount of stock to be taken, the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or, in case it is proposed to borrow money to pay said subscription, then the notice should state the terms upon which said loan is to be effected, and the opinions of the electors shall be expressed upon their ballots—"for subscription," or "against subscription." And the law further provides that these votes should be counted and returned by the judges and clerks of election as in other cases; *and if a majority of the voters of said county or city* (assuming the standard aforesaid) shall be in favor of the same such subscription should be made by the common council, and only in that event. It has been decided by this Court that a municipality must have legislative authority to subscribe to the capital stock of a bridge company or its officers cannot bind the body politic for the payment of bonds purporting to be issued on that account: and if essential proceedings prescribed by law for investing municipal officers with power to subscribe for the stock and issue of bonds in payment thereof be dispensed with, the bonds will be invalid in the hands of all who cannot claim protection as bona fide holders. McClure vs. Township of Oxford, 94 U. S. 429. In this case the court held that the notice of the election to subscribe for stock not having been given thirty days after the law went into effect, and before the election, that the election was not held pursuant to notice of thirty days, as required by the act, and that the recitals of bonds put the purchaser upon enquiry, and charged him with notice of all that the bond and law contained.

The declaration in the case at bar does not set out the terms of the bond and recitals as in the case of McClure vs. Township of Oxford. The declaration simply declares on bonds issued by a municipal corporation to a railroad company, which any city had the authority to issue under certain contingencies,—i. e. strict compliance of the law of the general assembly conferring the power of issue. The bond itself contained the recital that they were issued under an ordinance, and the copy of the ordinance was printed on the back thereof. True, a copy of the bonds and

coupons were filed in court, but under the common law practice then pursued in the state of Illinois these bonds and coupons, with recitals on their face and the ordinance on the back thereof, did not become a part of the declaration. The act authorizing the subscription to the railroad company by municipal corporations is a general act of the State of Illinois and need not have been pleaded, but surely the pleader must show compliance with the act by the defendant in his declaration, before he can obtain judgment on demurrer to a plea of non-compliance.

The third plea of the defendant sets up the fact that it was a municipal corporation and that the Common Council of said city did not at any time prior to the issuing of said bonds and coupons order an election to be held submitting to the legal voters of said city the question of subscribing to the capital stock of Warsaw & Rockford Railroad Company, as provided by section 4 of an act of the General Assembly of the State of Illinois, entitled an act to provide for a general system of railroad incorporation, approved on September 6, 1849, or by any other act of the state of Illinois. As the law set out in the plea expressly prohibited the issue of any bond by a municipal corporation to a railroad company, except in accordance with an election held for that purpose as already stated, the defence in the third plea was a perfect defence, and the demurrer thereto should have been over-ruled. The only thing before the court was the declaration, plea and the demurrer and the question of estoppel by recitals could not have arisen on the record, *as the bond was no part of the declaration.* Defendant by admitting that there was no election held as required by that act, admitted that there was no authority for issuing the bond. If, by any other acts the defendant was estopped from making this defence, the plaintiff ought to have filed a replication to the third plea, setting up these acts of estoppel and have gone to trial on that issue. Defendant had a right to be heard on this defense, unless estopped, and until the estoppel was *pleaded* by replication it would have been a perfect defence. Plaintiff did not plead estoppel in his declaration and the demurrer to the third plea should have been overruled.

The 4th and 5th pleas deny that any election was held as required by the fourth section of the act, particularly specifying the defects in the notice. In order to hold an election, correct notice was necessary therefor, and a proper return of the judges of election, &c., these were denied by the fourth and fifth pleas, and the demurrer thereto ought to have been overruled, for the reasons that have been given above when considering the third plea. The same argument will also apply to the action of the court on the demurrer to the second plea, which was a general one, that the bonds and coupons were issued without any authority of law.

We insist, therefore, that the court below, erred in depriving the city, as the pleadings then appeared, from making a defence on its 2, 3, 4 and 5 pleas, and that the demurrer was wrongfully sustained.

The 2d point, which we desire to call attention to is the 6th plea of defendant, which is—*actio non*—because the defendant, the City of Nauvoo being a municipal corporation having a common council, held no election under any order of the common council of said city, neither on June 4th 1853, nor at any other time prior to the issuing of said bonds submitting to the legal voters of said city at an election to be held at the usual place of holding such elections in said city for the election of city and county officers on July 13th, 1853, or any other day prior to the issuing of said bonds, the question of subscription to the capital stock of the Warsaw & Rockford Railroad Company to the amount of $25,000, or any other sum whatever, at which a majority of the qualified voters of said city (taking as a standard the numbers of votes thrown) at the last general election previous thereto, voted for said subscription as stated in the ordinance of said city referred to in said bonds respectively, and a copy of which is printed on the back of each of said bonds." This, if true, is a perfect defence under the fourth section of the law authorizing the issue of such bonds unless by reason of some other act not contained in the record, the city was estopped from setting up this defence. It is a fact however, *that this sixth plea presenting an absolute defence to this suit was neither demurred to nor replication thereto filed.* It stands confessed by the plaintiff, and no evidence could be introduced by the plaintiff to show that the plea ought not to have been allowed by the court below, because he made no issue on this sixth plea, either in fact or in law. We insist that this point alone is sufficient to reverse this case.

Not being in the case below, we do not know how this error occurred nor on what theory a plea setting up a defence, which, under ordinary circumstances would be a perfect bar to plaintiffs action was simply disregarded. In order to affirm this case, the Court must *presume* that the corporation had by its acts estopped itself to plead this defence. It must presume that it is false and frivolous, and pass it over in silence as not worthy of notice. If a defence is good under any circumstances, surely the plaintiff must show that the concurrence of circumstances which render it bad exists. Estoppels must be pleaded and proved—they cannot exist inferentially, nor will they be presumed. The burden is emphatically on him who relies on the estoppel to show that it exists, and yet the court below, without pleading or evidence of estoppel, by plaintiff, as the bond was not then before the court, sustained demurrers to the 2, 3, 4 and 5 pleas, and disregarded the sixth plea of defendant

and then gave judgment for plaintiff on the ground of estoppel alone. We insist that this record cannot support the judgment of the court below and it should be reversed.

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